

8/17/10

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Attorneys for Receiver
Dennis Murphy

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EMVEST MORTGAGE FUND, LLC;
EMVEST, INC.; and MILON LYLE
BROCK,

Defendants.

CASE NO.: 04CV2295-DMS (RBB)

JUDGE: Hon. Dana M. Sabraw

**RECEIVER'S TWENTIETH
VERIFIED REPORT AND
PETITION FOR INSTRUCTIONS**

CTRM: 10

DATE: September 3, 2010

TIME: 1:30 p.m. (No Oral Argument)



Emvest Mortgage Fund, LLC

Receiver's Twentieth Verified Report and Petition for Instructions;

Prepared by Dennis Murphy, Permanent Receiver,

For the Period from April 16, 2010 to August 10, 2010

This "Receiver's Twentieth Verified Report and Petition for Instructions" is filed on behalf of Emvest Mortgage Fund, LLC ("the Fund") in compliance with reporting requirements for Receivers under Civil Rule 66.1 (Receivers). This twentieth report covers the period from April 16, 2010 to August 10, 2010.

1 **1. Summary of Operations of Receiver:**

2 The Receiver continues, at this stage, to be focused on expeditiously liquidating
3 the Fund's remaining assets, while making prudent business decisions in a very
4 difficult financial environment. The receiver also continues to be focused on
5 preserving the Fund's cash so that the liquidation process may be fully supported.
6 The overwhelming constraint continues to be an almost total lack of liquidity in the
7 marketplace; this hinders transactions of every type and has greatly slowed the
8 liquidation process. The Receiver had hoped to have liquidated the portfolio by now,
9 but this has not happened. It is difficult even to predict with any certainty an
10 achievable planning target for liquidating the Fund, since the real estate market is still
11 suffering so badly.

12 As in the past, the Fund's operations continue in a stable manner, accurate and
13 timely financial reports are routinely prepared, solid financial controls are in place,
14 information is posted on the Fund's website for all to see, and the Receiver continues
15 to run the business on a daily basis. The goal always was to liquidate the Fund's
16 assets by the December 31, 2008 target date, but that did not happen. The remainder
17 of the portfolio is still for sale, and updated details of each loan are regularly posted
18 on the Fund's website for all to see and evaluate. Since there is still so much
19 uncertainty in the marketplace, it is still not clear how long it shall actually take to
20 complete liquidation of the Fund.

21 Here is a summary of operations related matters:

22 1.1 Continued Moratorium on Monthly Distributions to Members: The
23 Court Order entered on March 2, 2005 allowed the Receiver, at his discretion, to
24 "resume making monthly distributions to the Members of up to 6% annually, as long
25 as justified by the Fund's revenue". The Receiver resumed making regular monthly
26 distributions in March 2005 at an annual rate of 6%, and this policy continued through
27 the March 2010 distribution. However, since revenue dropped substantially as the
28 portfolio of loans has been reduced, distributions have now been halted as a

1 conservative and prudent business decision to preserve the Fund's cash for such things
2 as repairs to Real Estate Owned ("REO"), and for payment of REO utilities,
3 insurance, and property taxes.

4 1.2 Continued Moratorium on Emergency Hardship Refunds to Members:

5 The Receiver initially received permission under the Court Order entered on March 2,
6 2005 to "make distributions to Members based on a showing of extreme hardship or
7 emergency, not to exceed 20% of those Members' original capital". The Court
8 subsequently gave permission to the Receiver in extreme cases to refund up to 75% of
9 a Member's original capital. Most recently, in its Order entered on August 8, 2006,
10 the Court granted the Receiver's request to be able "to disburse up to the book value
11 of a Member's equity for Members of not more than \$15,000 who face extreme
12 hardship, in order to provide additional help". This policy continued successfully for
13 an extended period of time, but the Receiver has now temporarily halted making
14 hardship disbursements to Members in order to preserve cash.

15 1.3 Further Voluntary Reduction of Receiver's Fees: With Court approval,
16 to conserve Fund assets, the Receiver voluntarily reduced his fixed Fund management
17 fee from \$12,500 per month down to \$9,000 per month starting in January, 2008.
18 With Court approval, as of January 2010 the Receiver voluntarily further reduced that
19 monthly fee down to \$5,000. This reduced fixed-fee arrangement has yielded
20 significant savings to the Fund. Non-operations fees continue to be excluded from
21 this fixed fee. This fee payment process continued through March 2010, but the cash
22 payment policy has been temporarily halted.

23 To further preserve cash, starting in April 2010, the Receiver and his attorneys
24 have not received any cash payments. All fees are being accrued until sufficient cash
25 is available. Since cash distributions were halted to Emvest members, the Receiver
26 and his attorneys believe it is only fair that they should also be subject to the same
27 cash distribution constraints.

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1 1.4 Loan Portfolio Status: The Fund's loan portfolio continues to be
2 negatively affected by very weak market conditions, and fund management continues
3 to require substantial close attention. Slow but steady progress continues to be made
4 towards liquidation of the portfolio, as shown on the attached financial statements.
5 The portfolio principal balance was \$14,968,831 as of December 31, 2006; it has been
6 reduced to \$811,290 as of June 30, 2010, plus Real Estate Owned ("REO") of
7 \$1,837,455. Although the Receiver continues to market the foreclosed properties
8 aggressively, continued uncertainty plus the overwhelming lack of liquidity in the
9 market (which means that new mortgages are more difficult to obtain and old loans
10 cannot be refinanced) means that finding qualified buyers for REO continues to be
11 very difficult.

12 1.5 "Member's Equity to Buy REO" Plan: In the "Order Re: Receiver's
13 Thirteenth Report", the Receiver obtained Court approval for a new plan by which
14 Members could use their current equity towards the purchase of any of the Fund's
15 Real Estate Owned ("REO"). The Receiver's Fifteenth Report describes the details of
16 this plan. One property was successfully sold to a Member under this plan. This offer
17 remains in effect since it would not diminish the Fund's cash reserves.

18 1.6 Continued Moratorium on "Discounted Cash-Out" Plan: In the "Order
19 Re: Receiver's Fourteenth Report", the Receiver obtained Court approval for a new
20 plan by which Members could cash-out their equity at a discount. This plan has been
21 temporarily halted since it would diminish the Fund's cash reserves.

22 **2. Financial Statements:**

23 Monthly financial statements which conform to Generally Accepted
24 Accounting Principles ("GAAP") continue to be prepared on a timely basis, and
25 continue to be posted regularly on the Fund's website (<http://emvest.info>). In
26 addition, these financial statements are included with the Receiver's periodic reports
27 sent to Members. Attached hereto as Exhibit "A" are Financial Statements as of June
28 30, 2010 for the Fund, including a Balance Sheet, Income Statement, Recap of

1 Members' Equity, and a Schedule of Accrued Interest.

2 Since the size of the Fund's loan portfolio has been reduced from about \$15
3 million on December 31, 2006 to about \$811,000 on June 30, 2010 (plus about \$1.8
4 million of Real Estate Owned), and since more than \$8 million has been paid to
5 withdrawing Members since the start of 2007, simply comparing current net income to
6 historical net income is no longer a meaningful approach to assessing the Fund's
7 performance. As discussed below, even the approach of tracking the Book Value of a
8 \$10,000 Investment is no longer a reliable metric.

9 As a continued reminder, since this is an accrual (rather than cash based)
10 Income Statement, the net income also includes expenses for 100% of the fees billed
11 by the Receiver and his attorney although they were not actually paid. The accrued
12 unpaid fees are shown as Current Liabilities on the Balance Sheet.

13 2.1. Income Statement: For the six months ended June 30, 2010, the Fund
14 recorded negative net income of \$317,369 which includes REO Costs of \$261,646.

15 2.2. Balance Sheet: For the period ending June 30, 2010, the loan portfolio is
16 valued at \$811,290 and the amount of "Real Estate Owned" ("REO") of \$1,837,455
17 reflects real estate which has been taken back by the Fund through foreclosures.
18 Additional foreclosures may occur, and the sale of certain REO is expected.

19 2.3. Recap of Members' Equity: As of December 31, 2009, the book value of
20 a \$10,000 original investment was estimated to be \$3,802 (i.e., about 38.6% of
21 Members' original investment) based on the Receiver's good faith estimate of the
22 "fair market value" of the Fund's remaining assets. As the Fund's portfolio has
23 dropped and as market conditions have become more uncertain, it has become more
24 and more difficult for the Receiver to try to provide an accurate "fair market value"
25 estimate of the Fund's assets. Hence, this metric shall no longer be provided since it
26 has become more speculative and could possibly be misleading to the Fund's
27 members.

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1 **3. Overview with Estimated Timeline and Valuation for**
2 **Fund Liquidation:**

3 In brief overview, since the last Receiver's Report, twelve lots have been sold
4 and eight assets remain. A newly built REO house in Northern California has now
5 finished construction and is listed at about \$1.1 million. Two assets are being
6 resolved through the legal process (one lawsuit and one mediation). One loan is being
7 refinanced at a discount to the borrower. Two other REO properties in Northern
8 California are listed for sale; one of them has fallen out of escrow twice, and offers are
9 being received on both properties. One commercial property in Los Angeles is listed
10 for sale, and offers are being received. There is also one note that is for sale.

11 Liquidation of the Fund's remaining assets should yield a return to current
12 Members of about 20% of their original investment. Since Members have already
13 received about 45% of their original investment back in payments (including both
14 interest and return of equity), members would have received back a total of about two-
15 thirds of their original investment.

16 The objective now is to liquidate the Fund's assets by the end of 2010, and the
17 Receiver believes that this goal is realistic and achievable.

18 DATED: August 11, 2010

GREENBERG & BASS LLP

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20 By: /s/ James R. Felton

21 JAMES R. FELTON
22 Attorneys for Receiver
23 Dennis Murphy
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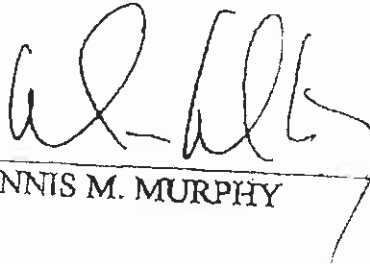
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VERIFICATION OF DENNIS M. MURPHY

I, Dennis M. Murphy, declare as follows:

I am the Court appointed Permanent Receiver in this matter. I have read The Twentieth Report of Receiver to be filed concurrently with this Verification and know the contents thereof. The information contained therein is true and correct of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2010 at Pasadena, California.



DENNIS M. MURPHY

G&B
Gibson & Bass LLP

EXHIBIT A

**EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
BALANCE SHEET
June 30, 2010**

ASSETS

Current Assets			
Cash in Bank	\$	66,065	
Accrued Interest Receivable		32,194	
Total Current Assets		98,259	\$
Loan Portfolio			
Mortgage Loans held	\$	813,682	
Loans in Process & Advanced Costs	\$	9,064	
Allowance for Foreclosed Assets		(11,456)	
		811,290	\$
Other Assets			
Real Estate Owned	\$	1,837,455	
Software	\$	2,712	
Bond - Certificate of Deposit		10,000	
		1,850,167	\$
Total Other Assets		1,850,167	
Total Assets		2,759,716	

LIABILITIES AND EQUITY

Current Liabilities			
Accrued Expenses - Attorney for Receiver	\$	51,572	
Accrued Expenses - Receiver		173,449	
		225,021	\$
Total Current Liabilities		225,021	
Long Term Liabilities			
Prior Years Uncleared Checks	\$	6,188	
		6,188	\$
Total Long Term Liabilities		6,188	
Total Liabilities		231,209	
Total Members' Equity		2,528,507	
Total Liabilities and Members' Equity		2,759,716	\$

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**EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
INCOME STATEMENT
FOR THE SIX MONTHS ENDED JUNE 30, 2010**

Revenue		
Interest Income		<u>\$ 26,242</u>
Total Revenue		<u>\$ 26,242</u>
Operating Expenses		
Accounting/Bus Operations - Receiver	54,004	
Advance Insurance		
Attorney Expenses - Receiver	20,980	
Bad Debt	-	
Bank Service Charges	2,463	
Foreclosed Asset Expense	3,226	
Licenses, Fees & Permits	-	
Litigation Response - Receiver	-	
Loan Documentation	-	
Loan Servicing - FCI	415	
Miscellaneous	-	
Office Expense	6,635	
REO Costs	261,646	
Taxes	-	
Tax Issues - Receiver	-	
Total Operating Expenses		<u>\$ 349,369</u>
Net Ordinary Income		<u>(323,127)</u>
Other Income/(Expense)		
Other Income	5,758	
Interest Other	-	
Other Expense	-	
Net Other Income/(Expense)		<u>5,758</u>
Net Income		<u><u>\$ (317,369)</u></u>

EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
RECAP OF MEMBERS EQUITY
FOR THE TIME PERIOD 01/01/02 THROUGH 6/30/10

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Y-T-D</u> <u>2010</u>	<u>Totals</u>
Members' Equity at Beginning of Year	-0-	\$ 3,774,359	\$ 10,646,176	\$ 15,269,624	\$ 15,003,527	\$ 15,840,643	\$ 9,105,176	\$ 5,421,079	\$ 2,960,982	
Capital Contributions	\$ 4,215,807	8,080,495	8,014,408	0	0	0	0	0	0	20,310,710
Net Income	97,702	520,460	721,953	1,147,862	2,790,958	70,881	(1,842,715)	(1,412,698)	(317,369)	1,777,034
Distributions to Members	(124,574)	(908,462)	(1,570,242)	(857,856)	(992,290)	(687,881)	(532,188)	(486,199)	(115,105)	(6,319,057)
Withdrawals to Members	(182,734)	(426,570)	(2,140,175)	(556,103)	(873,373)	(6,214,386)	(1,309,194)	(561,200)	0	(12,522,146)
Rounding						1	0	0	0	2
Syndication Costs	<u>(231,842)</u>	<u>(394,106)</u>	<u>(402,496)</u>	<u>-</u>	<u>11,821</u>	<u>95,918</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>(920,705)</u>

Members' Equity at End of Year	<u>\$ 3,774,359</u>	<u>\$ 10,646,176</u>	<u>\$ 15,269,624</u>	<u>\$ 15,003,527</u>	<u>\$ 15,840,643</u>	<u>\$ 9,105,176</u>	<u>\$ 5,421,079</u>	<u>\$ 2,960,982</u>	<u>\$ 2,528,508</u>	<u>\$ 2,325,838</u>
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Book Value of \$10,000 Investment	\$ 9,359	\$ 9,109	\$ 8,695	\$ 8,817	\$ 9,811	\$ 9,275	\$ 6,491	\$ 3,802	\$ -	\$ -
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16000 Ventura Boulevard, Suite 1000, Encino, California 91436.

On August 16, 2010, I served the foregoing document described as **RECEIVER'S TWENTIETH VERIFIED REPORT AND PETITION FOR INSTRUCTIONS** on the interested parties in this action.

- by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

- BY REGULAR MAIL:** I deposited such envelope in the mail at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was deposited with delivery fees thereon fully prepaid.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 16, 2010, at Encino, California.


Margaret J. Syndall

SERVICE LIST

United States Securities and Exchange Commission
v. Emvest Mortgage Fund, et al.
Case No. 04CV2295-DMS(RBB)

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Notices

3:04-cv-02295-DMS-RBB SEC v. Emvest Mortgage Fund, et al **CASE CLOSED** on 05/17/2006
 REFER, SEALDC, TERMED, TRIAL

U.S. District Court**Southern District of California****Notice of Electronic Filing**

The following transaction was entered by Felton, James on 8/16/2010 at 4:39 PM PDT and filed on 8/16/2010

Case Name: SEC v. Emvest Mortgage Fund, et al

Case Number: 3:04-cv-02295-DMS-RBB

Filer: Dennis M Murphy

WARNING: CASE CLOSED on 05/17/2006

Document Number: 497

Docket Text:

NOTICE by Dennis M Murphy Receiver's Twentieth Verified Report and Petition for Instructions (with exhibit and proof of service) (Felton, James)

3:04-cv-02295-DMS-RBB Notice has been electronically mailed to:

David Robert Clark Drclarklaw@att.net

James R Felton jfelton@greenbass.com, twilliams@greenbass.com

Joseph Jr Scanlan , A jas@millermorton.com, lac@millermorton.com

Molly M White whitem@sec.gov

Raymond Roy Lee leesd@aol.com

Robert Anthony Cocchia rcocchia@mckennalong.com, lwhitaker@mckennalong.com

3:04-cv-02295-DMS-RBB Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=8/16/2010] [FileNumber=4446697-0
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